

G. WESLEY AULT

IBLA 74-212 Decided August 8, 1974

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-17007, terminated by operation of law for failure to pay the annual rental on or prior to the due date.

Affirmed.

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely can be reinstated under 30 U.S.C. § 188(c) (1970), only when the lessee shows that his failure to pay the rental on or prior to the anniversary date of the lease was either justifiable or not due to a lack of reasonable diligence.

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

The misplacement of a lessee's records through the negligence of his employee or agent will not be deemed a justifiable cause for the lessee's failure to exercise reasonable diligence in transmitting timely an advance rental payment due under an oil and gas lease.

APPEARANCES: G. Wesley Ault, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

G. Wesley Ault appeals from a decision of the Utah State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease U-17007, a nonproducing lease which terminated by operation of law for failure to make timely payment of the annual rental. The decision determined "that the failure to make timely

payment was not justifiable but was due to a lack of reasonable diligence, and that oil and gas lease U-17007 may not be reinstated under 43 CFR 3108.2-1(c)." We affirm the decision.

Section 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C.

§ 188 (1970), provides that a nonproducing oil and gas lease will terminate if the annual rental has not been received on or before the anniversary date of the lease. The lease may be reinstated only if the full amount owed has been paid or tendered within 20 days after the anniversary date, and if it has been shown to the satisfaction of the Secretary that the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *." A Departmental regulation says that:

* * * [r]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. * * * 43 CFR 3108.2-1(c)(2).

It is clear that appellant did not exercise "reasonable diligence" in sending his payment. The anniversary date of lease U-17007 was December 1, 1973. Since December 1 fell on a Saturday, the due date of the lease payment was postponed to the next business day, in this case December 3. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). Appellant's envelope containing his lease payment was not postmarked until December 14, 11 days after the due date, and was received by the State Office on December 17.

Neither do we find that appellant's failure to make timely payment was "justifiable." Appellant attributes his delay in payment to the misplacement of his lease records resulting from the rearrangement and relocation of his personal files while he was out of town. He states that as soon as he discovered the misplaced records he submitted the payment.

A failure to exercise "reasonable diligence" in payment of rental is "justifiable" only when caused by a factor which is ordinarily outside of the control of the lessee and which occurs in close proximity to the anniversary date of the lease, such as an earthquake, flood or other natural disaster, or the death or illness of the lessee or of a member of his immediate family. Sufficiently extenuating circumstances must be present so as to affect the lessee's actions. Louis Samuel, 8 IBLA 268, 274 (1972); see John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972). The misplacement of lease records does not fall within the confines of "justifiable" cause. It is the responsibility of the lessee to preserve and to keep in order whatever records may be necessary to insure the prompt performance of his obligations under the lease.

The negligence of his employee or agent during his absence does not relieve him of that responsibility, and is not a factor contemplated by the statute as being outside of the lessee's control. Cf. Knight & Miller Oil Corp., 13 IBLA 337 (1973); M. A. Schofinan, 13 IBLA 205 (1973); Monturah Co., 10 IBLA 347 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

